

STATE RETIREMENT BOARD: An employee of the Missouri Commission on Higher
COMMISSION ON HIGHER Education is not eligible for membership in the
EDUCATION: University of Missouri Retirement Plan. However,
UNIVERSITY OF MISSOURI: he must become a member of the Missouri State Em-
ployees' Retirement System at the time of his
employment with the Commission.

April 1, 1964

Opinion No. 147

Mr. Philip M. Sestric
Vice Chairman
Missouri Commission on
Higher Education
705 Olive Street
St. Louis 1, Missouri



Dear Mr. Sestric:

This is in reply to your opinion request of March 23, 1964, in which you ask:

"The Commission has employed an Executive Secretary and an office staff of one secretary. In addition thereto, it is anticipated that the Commission will employ two additional specialist[s] and one additional office secretary. In the Bill creating the Commission and authorizing employment of needed personnel, no mention was made as to retirement benefit plan in which these employees would be placed. In general discussion had by members of the Commission, it appeared that these employees could very well be placed in the University of Missouri Retirement Plan, especially the Executive Secretary and other specialists who shall be employed."

The Missouri Commission on Higher Education was established by Section 173.010, RSMo Cumulative Supplement 1963, which provides:

"There is hereby established the 'Missouri Commission on Higher Education', consisting of ten members appointed by the governor and an 'Advisory Council to the Commission', composed of members appointed by the commission, the members of both bodies to be appointed in accordance with the provisions of this chapter."

The employed personnel for said commission is provided for by Section 173.090, which states:

"The division of budget and comptroller shall make available such services as may be requested by the commission. The commission may employ, within the limits of and in compliance with appropriations and grants made available to it, such professional, clerical and research personnel as may be necessary to assist in performing its duties under the provisions of this chapter."

Section 109 of the Conference Committee Substitute for House Bill No. 15 of the 72nd General Assembly contains an appropriation of \$99,945.00 for the Missouri Commission on Higher Education (\$72,315.00 - Personal Service, \$3,630.00 - Additions, \$24,000.00 - Operations). This bill specifically provides that this appropriation is chargeable from the General Revenue of the State Treasury.

The legal basis for the University of Missouri Retirement Plan is spelled out in Section 172.300, RSMo 1959. Said statute states, in part, that the Board of Curators may appoint and remove employees of the University, define and assign their powers and duties, and fix their compensation,

" . . . and such compensation may include payments under, or provisions for, such retirement, disability or death plan or plans as the curators deem proper for persons employed by the university and paid out of any of its public funds for educational services, and the curators may administer such plan or plans under such rules and regulations as they deem proper; . . ." (underlining ours)

It is abundantly clear that the "Missouri Commission on Higher Education" created by Section 173.010, RSMo Cumulative Supplement 1963, is a separate commission of the state, not connected with or a part of the University of Missouri. Therefore, it follows that the Commission's employees, authorized by Section 173.090, RSMo Cumulative Supplement 1963, would not be employees of the University of Missouri. This is further evidenced by the fact the Commission's appropriations are chargeable to the General Revenue of the state under Section 109 of Conference Committee Substitute for House Bill No. 15 of the 72nd General Assembly, and not the funds of the University of Missouri.

Thus, it is our conclusion that the employees of the "Missouri Commission on Higher Education" are not eligible to become members of the University of Missouri Retirement Plan.

However, it does appear that said employees qualify as members of the "Missouri State Employees' Retirement System".

This system comprises Sections 104.310 to 104.550, RSMo 1959. Section 104.310 contains the definitions of terms used in this law. Paragraph 15 defines "employee", and Paragraph 11 defines "department". It is from the provisions of these two definitions that we must determine whether or not the employees of the "Missouri Commission on Higher Education" can qualify under this law and become members of the Missouri State Employees' Retirement System. The pertinent portion of the definition of "employee" is as follows:

"(15) 'Employee', any elective or appointive officer or employee of the state who is employed by a department and earns a salary or wage in a position normally requiring the actual performance by him of duties during not less than one thousand five hundred hours per year, including each member of the general assembly, but not including any employee who is covered under some other retirement or benefit fund to which the state is a contributor, . . ."

The definition of "Department" is as follows:

"(11) 'Department', any department, institution, board, commission, officer, court or any agency of the state government receiving state appropriations including allocated funds from the federal government and having power to certify payrolls authorizing payments of salary or wages against appropriations made by the federal government or the state legislature from any state fund, or against trusts or allocated funds held by the state treasurer;"

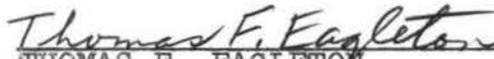
There can be no doubt that this Missouri Commission on Higher Education falls within the definition of Section 104.310(11), and its employees meet that of Section 104.310(15). This being so, it is mandatory under Section 104.330, RSMo 1959, that the employees of said Commission become members of the Missouri State Employees' Retirement System at the time of their employment.

CONCLUSION

An employee of the Missouri Commission on Higher Education is not eligible for membership in the University of Missouri Retirement Plan. However, he must become a member of the Missouri State Employees' Retirement System at the time of his employment with the Commission.

The foregoing opinion, which I hereby approve, was prepared by my assistant, George W. Draper, II.

Very truly yours,


THOMAS F. EAGLETON
Attorney General